

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Roy and Josie Fisher, et al.,
Plaintiffs

and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.,
Defendants,

No. CV-74-00090-TUC-DCB
(Lead Case)

Maria Mendoza, et al.,
Plaintiffs,
and
United States of America,
Plaintiff-Intervenor,
v.
Tucson Unified School District, et al.
Defendants.

No. CV-74-0204-TUC-DCB
(Consolidated Case)

ORDER

Report & Recommendation Re: Reallocation of 2020-20 910G Funding- APPROVED

1 Pending before the Court is the District's request to reallocate 910G funds originally
2 budgeted in SY2020-21 for costs of transporting students that were not spent because the
3 District closed its brick and mortar schools this past year due to the COVID-19 pandemic.
4 The District proposes to reallocate these 910G funds, previously allocated for
5 transportation, towards a massive summer education program it is undertaking to help
6 students regain lost ground this past year during the pandemic.

7 The District proposes to reallocate approximately \$5,000,000, with \$3,000,000
8 reallocated for a Summer Program which will cost a total of approximately \$9,000,000.
9 Oversimplified, it appears that the District plans to reopen its schools this summer. The
10 remainder of the \$5,000,000 910G reallocation is as follows: \$1,000,000 for Enhanced
11 Learning Spaces at Targeted Improvement Magnet Schools, \$300,000 Professional
12 Learning, \$466,000 for Minibus purchases, and \$544,000 for Accelerated Technology,
13 Supplies, and Material Purchases.

14 The Special Master and budget expert worked extensively with the District, made
15 suggestions for substantial changes to the District's initial request, afforded the plaintiffs
16 the opportunity to comment and object, and considered objections raised by the Plaintiffs,
17 including those reasserted here. The Special Master reports that the reallocation now
18 proposed by the District addresses the important objections of the Plaintiffs which were
19 made during the review process, and that both he and the budget expert assisting him
20 approve the reallocation in its entirety. He recommends the Court act quickly to approve
21 the reallocation because summer school begins soon and reallocations of 2020-21 910G
22 funding can't be made as of July. (R&R (Doc. 2574)).

23 The Mendoza Plaintiffs object, generally, to the proposed reallocation as maybe not
24 being sufficient to address the needs of the summer program and not sufficiently supported
25 by direct links to the USP.

26 Specifically, the Mendoza Plaintiffs oppose the reallocation of the \$466,000 to
27 purchase six minibuses. The Plaintiffs argue that the District fails to link the minibus
28 purchase to the USP. The Court has understood past allocations of 910G funding for

1 transportation to be generally linked to the USP because of the important role played by
2 transportation in attaining integration. In this way, purchasing busses including minibuses,
3 is generally linked to the USP. Specifically, purchasing six minibuses to improve
4 transportation for extracurricular activities is linked to the USP because equity in
5 extracurricular activities for African American and Latino students, who are also low-
6 income students with limited access to personal means of transportation to after school
7 activities, is dependent on transportation.

8 The general objection fishtails into the specific minibus objection because Plaintiffs
9 argue that perhaps the \$446,000 minibus reallocation should be, instead, to the summer
10 school program, but who knows because “[t]he District has provided insufficient
11 information to permit an informed assessment of many of the other expenditures that it
12 proposes.” (Mendoza Objection (Doc. 2575) at 2, 4.)

13 The Mendoza Plaintiffs underscore that “they support reallocations of unspent
14 2020-21 transportation sums to fund needed summer programs for both students and
15 District employees and the accelerated purchase of technology, supplies, and material
16 purchases.” *Id.* at 3. They simply suggest that “more 910(G) money (including that which
17 had been proposed to be spent on the mini-bus purchase) should be allocated to these
18 areas,” *id.* at 4, instead of to the minibuses. For example, they complain it is unclear whether
19 the reallocated \$3,000,000 covers transportation for the summer program to elementary
20 and middle school sites or the cost of free meals, etc.

21 The District responds that the reallocated \$3,000,000 will make up a part of the
22 approximately \$9,000,000 summer program. It appears that the District’s summer program
23 is equitably available to all students at every elementary and middle school (Reply, Ex. A
24 (Doc. 2579-1)) and high school, *id.*, Ex. B (Doc. 2579-2)). The only evidence to the
25 contrary arises from the Mendoza Plaintiffs’ complaint that the District refused to respond
26 to its inquiry regarding transportation priorities for summer programs, which it asked in
27 response to the District’s report to its Governing Board that “it might not be able to provide
28 transportation to all elementary and middle school summer school sites because of a

1 shortage of bus drivers.” (Mendoza Objection (Doc. 2575) at 4-5.) Notably, this is the
2 problem addressed by the purchase of the minibuses because they do not require
3 commercial-licensed drivers, which enables the District to stretch their transportation
4 resources by using regularly licensed drivers to drive minibuses when ridership does not
5 require regular buses and commercially-licensed drivers. (Reply (Doc. 2579) at 4-5.)

6 In response to the Mendoza Plaintiffs’ concerns that it may not be adequately
7 prioritizing the needs of Latino and African American students for reallocating the 910G
8 funding, the District responds: “If, as plaintiffs contend, the impact of learning through the
9 pandemic has disproportionately affected African American and Hispanic students, then
10 the summer education program will disproportionately benefit them, and it is truly
11 appropriate to use § 910(G) funds for this purpose.” (Reply (Doc. 2579) at 3).

12 The District’s clever response sweeps to broadly in painting its priorities if it means
13 to suggest that student programs, like the summer program, that benefit students
14 disproportionately benefit Latino and African American students simply because these
15 students make up the majority of the District’s students. The disproportionate disadvantage
16 experienced by Latino and African American students during the COVID-19 pandemic
17 was because of a lack of resources, which does not correlate to any advantage for these
18 students from the summer school program. Unlike the disproportionate disadvantage these
19 students experienced during the pandemic, these students will not experience a
20 disproportionate advantage from the summer programs, unless the District is simply
21 considering their disproportionate numbers in the student population attending the summer
22 program. Then, this would only be true for Latino students, not African American students
23 which make up less than 10% of the District’s students.

24 There is no reason, however, to delay the 2020-21 910G funding reallocation
25 decision as suggested by the Mendoza Plaintiffs for further inquiry. Without further delay,
26 the Court addresses the Mendoza Plaintiffs’ concerns by finding that the District shall
27 ensure that in any circumstances relevant to the summer programs where there is a shortage
28 of resources, including any offered academic programs, materials, or transportation, the

1 District shall prioritize delivery of summer school services to and for meeting the needs of
2 students attending Racially Concentrated schools.


3 **Accordingly,**

4 **IT IS ORDERED** that the Report and Recommendation Re: 2020-21 Reallocations
5 (Doc. 2574) is ADOPTED, approving the District's reallocation of the 2020-21 910G
6 funding.

7 **IT IS FURTHER ORDERED** in any circumstances relevant to the summer
8 programs there is a shortage of resources, including any offered academic programs,
9 materials, or transportation, the District shall prioritize delivery of summer school services
10 to and the needs of students attending Racially Concentrated schools.

11 Dated this 10th day of May, 2021.

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Honorable David C. Bury
United States District Judge